

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

XO Illinois Inc.	:	
-vs-	:	
NorthPoint Communications, Inc.	:	01-0296
	:	
Petition for Emergency Relief.	:	

ORDER

By the Commission

On March 29, 2001, XO Illinois, Inc. and XO Communications Inc. ("XO" or "Complainant"), a reseller of DSL services, filed a Petition for Emergency Relief ("Complaint") with this Commission which sought to enjoin NorthPoint Communications, Inc. ("NorthPoint" or "Respondent") for a reasonable time from terminating its xDSL services to XO and other customers until such time as XO was able to obtain alternative source of DSL access to service its customers. There were no intervenors. Pursuant to notice, hearings were held on April 6, 2001 and May 15, 2001 before a duly authorized Hearing Examiner in the Commission's Office in Chicago, Illinois.

At the time that the Complaint was filed, NorthPoint had filed for protection under bankruptcy laws and was preparing to terminate service to its customers without providing 30 days notice to its customers or the Commission pursuant to Section 13-406 of the Public Utilities Act ("Act"). By April 6, 2001, the date of the initial hearing, NorthPoint had terminated service to its customers and asserted it no longer had the manpower or resources necessary to reinstate service to its customers even if ordered to do so. This service termination caused NorthPoint's many Internet Service Provider ("ISP") customers to be unable to service the customers to whom they resold DSL service. Furthermore, these ISPs were initially unable to obtain an alternative source for their service needs because NorthPoint had not disclosed circuit identification numbers necessary for that purpose.

At the hearing on April 6, 2001, NorthPoint agreed to work with XO and other ISPs to facilitate the transition of its customers to other DSL providers. Subsequently, on May 8, 2001, all matters in controversy having been resolved, the parties filed a Joint Motion for Entry of Order of Dismissal on Stipulated Terms and Conditions ("Motion").

This Motion requests that the Commission require that any other carrier going out of business in the future require provide 30 days written notice to affected

customers and carriers prior to termination of service. Furthermore, the Motion requests that the Commission implement specific rules which would, in the future, facilitate the transfer and continuation of service by other carriers when, and if, a wholesale DSL carrier goes out of business. At a hearing held on May 15, 2001, the Motion was taken under advisement and the docket was marked heard and taken. On May 22, 2001 a Hearing Examiner's Proposed Order ("HEPO") was issued which called for Briefs on Exceptions to be filed on or before June 6, 2001. The parties filed a Joint Brief on Exceptions, modifying their earlier Joint Motion to Dismiss, and urging the Commission to issue an Order stating that all carriers have an obligation to provide the statutory notice and facilitate the migration of customers to other carriers. In their brief on exceptions, the parties also requested that the Commission institute a rulemaking to address the conversion process between competing local exchange carriers.

Commission Analysis and Conclusion

XO's and NorthPoint's Joint Motion to Dismiss request the Commission to engage in ad hoc rulemaking without providing notice and hearing to those entities that would be impacted by the proposed Order. Parties to a complaint proceeding before the Commission have no standing to compel the Commission to enter an order binding third parties who are not part of a proceeding to a course of future conduct.

Moreover, Section 13-406 of the Public Utilities Act ("Act") provides:

No telecommunication carrier offering or providing noncompetitive telecommunications service pursuant to a valid Certificate of Service Authority or certificate of public convenience and necessity shall discontinue or abandon such service once initiated until and unless it shall demonstrate, and the Commission finds, after notice and hearing, that such discontinuance or abandonment will not deprive customers of any necessary or essential telecommunications service or access thereto and is not otherwise contrary to the public interest. No telecommunications carrier offering or providing competitive telecommunications service shall discontinue or abandon such service once initiated except upon 30 days notice to the Commission and affected customers. The Commission may, upon its own motion or upon complaint, investigate the proposed discontinuance or abandonment of a competitive telecommunications service and may, after notice and hearing, prohibit such proposed discontinuance or abandonment if the Commission finds that it would be contrary to the public interest.

Therefore, telecommunications carriers are already required by statute to provide 30 days advance notice to the Commission and customers before discontinuing service. Although NorthPoint went out of business without providing the required notice, the Commission lacks the ability to require a defunct and bankrupt business to continue to provide service to its customers when the matter is brought to its attention after the business has shut its doors.

The Commission finds that the conditions and stipulations proposed by the parties in this Docket not already required by statute have now been performed by the Respondent in this case and cannot be made binding on other entities not a part of this proceeding, absent a rulemaking proceeding. Further the Commission will take the parties request that a rulemaking on this issue be initiated under advisement for possible future action.

FINDINGS AND ORDERING PARAGRAPH

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) XO Illinois Inc. is a reseller of DSL services. NorthPoint Communications, Inc. was a wholesale provider of xDSL services to XO and other customers;
- (2) the Commission has jurisdiction over the parties and subject matter herein;
- (3) XO Illinois Inc. filed a Complaint with this Commission which sought to enjoin NorthPoint Communications, Inc. from terminating its xDSL services to XO and other customers;
- (4) it appears that all matters in controversy between the parties have been resolved;
- (5) the parties have jointly moved for the dismissal of the Petition;
- (6) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (7) the Complaint may properly be dismissed.

IT IS THEREFORE ORDERED that the Complaint filed on March 29, 2001, by XO Illinois Inc. against NorthPoint Communications, Inc. be and the same is dismissed with prejudice.

IT IS FURTHER ORDERED that pursuant to Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 27th day of June, 2001.

Chairman